

## **Deposition Designations for:**

**JAY HUGHES**  
**June 11, 2009**

### **Deposition Designation Key**

**CI = Certain insurers (green)**

**CNA = Continental Cas. Co &  
Continental Ins. Co. (red)**

**PP's = Plan Proponents (blue)**

**Obj: = Objection**

**Ctr = Counter Designation**

**R = Relevance**

**BE = Best Evidence**

**F = Foundation**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11  
: Case No.  
W.R. GRACE & CO., et al, : 01-01139 JKF  
: (Jointly  
Debtors : Administered)

- - -

Thursday, June 11, 2009

- - -

Oral deposition of JAY W.

HUGHES, JR., ESQUIRE, taken pursuant to  
notice, was held at the offices of  
KIRKLAND & ELLIS, 665 Fifteenth Street,  
NW, Washington, DC 20005, commencing at  
9:07 a.m., on the above date, before Lori  
A. Zabielski, a Registered Professional  
Reporter and Notary Public in and for the  
Commonwealth of Pennsylvania.

- - -

MAGNA LEGAL SERVICES  
Seven Penn Center  
1635 Market Street  
8th Floor  
Philadelphia, Pennsylvania 19103

Key

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& Continental Ins. Co. (red)  
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**with W.R. Grace?**

A. I am a senior litigation counsel in the legal department.

**Q. How long have you held that position?**

A. I have had that title probably since 1991.

**Q. When asbestos claims began accumulating against Grace in the '80s and '90s right up until the time of the bankruptcy, what was your role with respect to those claims?**

A. I was responsible for the day-to-day management and resolution of the asbestos personal injury claims filed against the company.

**Q. Who was your -- or who were your supervisors at that time, your direct reports?**

A. Since 1991, my supervisor was the general counsel, Bob Beber. Bob retired in 1998. In 1998, David Siegel became general counsel. I reported to Dave. Dave retired in -- well, it was

after bankruptcy -- in 2005. Mark Shelnitz became general counsel. And at some point after Shelnitz became the general counsel, Richard Finke became assistant general counsel for litigation, and I reported to Richard since then.

**Q. We have taken the deposition of Mr. Finke. What documents have you reviewed to prepare to testify in this 30(b)(6) deposition?**

A. I've reviewed the deposition transcripts of Mr. Finke, of Mr. Posner, and I have taken a look at the Trust Distribution Procedures, the Trust Agreement, and some other insurance agreements, just to kind of refresh my recollection about the issues that I am testifying about.

**Q. Have you reviewed any written communications between insurers and Grace relating to resolution of disputes with insurance carriers in preparation for this deposition?**

A. No.

**Q. Were you involved with resolution disputes with insurers during your time as senior litigation counsel assigned to the asbestos claims?**

A. Yes.

**Q. How would you describe your role in those insurance dispute resolutions, by settlement, I assume, primarily, right? That's a compound question.**

MS. HARDING: Object to form.

MR. LEWIS: I will rephrase the question.

BY MR. LEWIS:

**Q. How were you involved in resolving the disputes with the insurance companies?**

A. Well, my primary role involved what I would refer to as post-settlement or post-resolution disputes with insurance carriers. I wasn't directly involved, although I was obviously consulted because of my

involvement in the underlying asbestos personal injury cases. I wasn't generally involved in the coverage litigation between Grace and coverage disputes and the insurance carriers.

I have had a much greater involvement in certain disputes that arose based on what I would call the kind of execution and implementation of the insurance and agreements and settlement agreements and coverage in place agreements and reimbursement agreements.

MS. HARDING: Wait one second. To everybody that's on the phone, could everybody please mute their lines while the questioning is going on here in the room. We hear a lot of rustling and talking and things. So please put your phones on mute. Thank you.

MS. ALCABES: Barbara, if the witness could speak up a little bit, it would be helpful,



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1 too. Thanks.

2 MS. HARDING: The witness is  
3 talking pretty loudly, so there is  
4 not a whole lot we can do about  
5 that. Sorry.

6 MR. LEWIS: Can you hear me?

7 MS. ALCABES: Yes.

8 MR. LONGOSZ: Yes.

9 MS. HARDING: All right.

10 Thank you.

11 BY MR. LEWIS:

12 **Q. Did you review your prior**  
13 **depositions or testimony relating to the**  
14 **Grace bankruptcy to prepare for this**  
15 **deposition?**

16 A. Yes, I did.

17 **Q. How many times have you been**  
18 **deposed with respect to the bankruptcy,**  
19 **once?**

20 A. Twice before today.

21 **Q. Okay. I have one**  
22 **deposition. Where were you deposed the**  
23 **first time?**

24 A. The first time I was deposed

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1 in the fraudulent conveyance lawsuit,  
2 which was an adversary proceeding, I  
3 believe, in the bankruptcy, and that took  
4 place in 2002. And then I was deposed in  
5 2007 in connection with the personal  
6 injury estimation trial.

7 **Q. Did you testify on behalf of**  
8 **Grace in the estimation trial?**

9 A. No, I didn't.

10 **Q. Well, I don't want to cover**  
11 **that. I have been through that**  
12 **deposition.**

13 **And I think what you are**  
14 **referring to when you talk about**  
15 **post-settlement disputes, just generally,**  
16 **you were talking about arranging for**  
17 **audits, reporting to settled insurers,**  
18 **and this sort of thing; is that generally**  
19 **correct?**

20 A. Yes, documenting settlements  
21 and issues that arose in terms of Grace's  
22 documentation of payment, in terms of  
23 reimbursements under the agreement.

24 **Q. One of the interesting**

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1 **things to the Libby counsel that it**  
2 **involved when we became involved in this**  
3 **case was the way insurance was --**

4 MR. SCHIAVONI: Objection to  
5 form.

6 MS. HARDING: He didn't ask  
7 a question.

8 MR. LEWIS: Let me finish  
9 the question.

10 MR. SCHIAVONI: I wanted to  
11 give you a chance to start over.

12 MR. LEWIS: What did you  
13 say, sir?

14 MR. SCHIAVONI: I was giving  
15 you an opportunity to start over.

16 MR. LEWIS: Just let me  
17 complete my question. My question  
18 is going to be pretty benign. I  
19 just want to get this witness to  
20 another subject. And you can make  
21 your objection, and we will  
22 proceed.

23 BY MR. LEWIS:

24 **Q. When we got in the case, we**

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1 **made interrogatory requests early on in**  
2 **all of our cases, inquiring as to whether**  
3 **there was liability insurance available**  
4 **to Grace to resolve these claims, and the**  
5 **answer we got was generally, don't worry**  
6 **about it, we have got enough money, you**  
7 **don't need to know about insurance. And**  
8 **no insurance information was provided.**

9 MR. SCHIAVONI: Objection.

10 MR. LEWIS: I am not done.  
11 Okay.

12 MR. SCHIAVONI: You are  
13 giving a speech. You are not  
14 asking a question.

15 BY MR. LEWIS:

16 **Q. Do you recall that sort of**  
17 **response early on?**

18 MS. HARDING: Object to  
19 form. I would have to --

20 MR. SCHIAVONI: Object to  
21 form.

22 THE WITNESS: I would have  
23 to see a response. I am familiar  
24 with our discovery responses

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1 MS. HARDING: I am not  
2 telling him not to answer. I am  
3 just stating my objection.

4 MR. LEWIS: Thank you. Are  
5 you done?

6 MS. HARDING: Yes.

7 MR. SCHIAVONI: Counsel, you  
8 are asking for a legal conclusion,  
9 point-blank. It's obvious. You  
10 can certainly say otherwise, but  
11 that's what you are asking for.  
12 We object. And stop making  
13 speeches. Just answer [sic]  
14 questions.

15 MR. LEWIS: I think you  
16 should keep your composure and not  
17 get so upset, Counsel. I am going  
18 to conduct this deposition. You  
19 can object, and we will proceed.  
20 Okay?

21 All right. Read back the  
22 last question, please.

23 (The reporter read from the  
24 record as requested.)

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1 BY MR. LEWIS:

2 **Q. With that preface --**

3 MR. SCHIAVONI: I object.  
4 If you are going to incorporate  
5 your statements about the law in  
6 questions, it's just  
7 objectionable. And you are a very  
8 experienced trial lawyer. You  
9 know that. You know better.  
10 Objection to form.

11 MR. LEWIS: Are you finished  
12 with your objection?

13 Okay.

14 BY MR. LEWIS:

15 **Q. With that preface and**  
16 **acknowledging your objection, was it**  
17 **important to you in your role in settling**  
18 **these cases that you have a passing**  
19 **knowledge of the laws of the various**  
20 **states in which the cases were brought?**

21 MS. HARDING: Object to  
22 form.

23 MR. SCHIAVONI: Objection to  
24 form.

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1 THE WITNESS: Yes.

2 BY MR. LEWIS:

3 **Q. For example, you settle**  
4 **cases in a multitude of states, correct?**

5 A. Yes.

6 MS. HARDING: Just object to  
7 form in terms of you.

8 But go ahead.

9 BY MR. LEWIS:

10 **Q. When I say "you," I am**  
11 **referring to you on behalf of Grace.**

12 **If you want me to use Grace,**  
13 **I will use Grace. Would that be better?**  
14 **I will use Grace if that bothers you so**  
15 **much.**

16 **Were you mindful of what**  
17 **jurisdiction or even venue you were in**  
18 **when you evaluated cases for settlement?**

19 A. Yes.

20 **Q. And why is that?**

21 A. Well, I think there  
22 obviously can be legal distinctions in  
23 terms of the law with respect to personal  
24 injury cases that would be relevant to

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1 the value of the case. And also there  
2 are differences in historical verdicts,  
3 the amount of the verdicts in a case, so  
4 the jurisdiction would be relevant there  
5 as well.

6 **Q. For example, whether there**  
7 **is joint and several liability in a state**  
8 **or not might impact your valuation of the**  
9 **settlement; is that true?**

10 A. Yes.

11 **Q. What factors did you**  
12 **consider in evaluating a case for**  
13 **settlement?**

14 A. Well, I think I have  
15 testified in both of my prior depositions  
16 in this case in a fairly detailed manner  
17 on that question.

18 But I think the same types  
19 of factors that any individual involved  
20 in resolving asbestos cases, specifically  
21 in personal injury cases, generally the  
22 quality of the evidence in terms of the  
23 exposure of the particular plaintiff to  
24 Grace's products, the particular

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<p>1 individual in terms of his age, the 2 seriousness of the disease. In the 3 asbestos arena, there is a distinction 4 between, say, lung cancer and 5 mesothelioma. Primarily it is due to the 6 fact that lung cancer, there are 7 established alternative causes to it. 8 And those are -- that's kind of an 9 overview. 10 <b>Q. Would the nature and extent 11 of the exposure in most cases be of 12 paramount importance to you in evaluating 13 a case for settlement?</b> 14 MS. HARDING: Object to 15 <b>CI</b> form. <b>PP's Obj: R</b> 16 THE WITNESS: I don't know 17 if it would be paramount 18 importance, but I think that 19 certainly the evidence of exposure 20 to Grace products was something 21 that was one of the primary issues 22 in terms of evaluating the case 23 against Grace and what it might be 24 worth.</p>	<p>1 in terms of the percentage of 2 asbestos in the products, they 3 were overwhelmingly chrysotile. 4 The only other asbestos that would 5 have been involved would have been 6 that which was incidental to the 7 vermiculite, if it originated from 8 Libby. 9 BY MR. LEWIS: 10 <b>Q. Was there any other source 11 amphibole asbestos besides the asbestos 12 that contaminated the vermiculite in 13 Libby and products manufactured by Grace?</b> 14 MR. SCHIAVONI: Objection, 15 no foundation, speculation. 16 THE WITNESS: It's fairly 17 well-known that chrysotile 18 deposits in Quebec, I believe, and 19 other parts of the world may have 20 some tremolite contamination as 21 well. Besides that, I would say 22 only the vermiculite and the 23 potential for -- Libby vermiculite 24 and the potential for Libby</p>
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<p>1 BY MR. LEWIS: 2 <b>Q. What percentage of the 3 cases, if you know, that are claims that 4 were brought against Grace were primarily 5 Monokote exposure cases?</b> 6 MS. HARDING: Object to 7 form, foundation, and overly 8 broad. 9 But if you can answer, go 10 ahead. 11 THE WITNESS: I couldn't 12 give a specific percentage, but a 13 substantial portion of the cases 14 historically involved exposures to 15 Monokote 3 and other products to 16 which a commercially chrysotile 17 asbestos had been added 18 commercially. 19 BY MR. LEWIS: 20 <b>Q. Do you consider the Monokote 21 cases as primarily chrysotile cases?</b> 22 MS. HARDING: Object to 23 form. 24 THE WITNESS: I think that</p>	<p>1 amphibole. 2 BY MR. LEWIS: 3 <b>Q. So if I suggested that most 4 amphibole asbestos used in Grace products 5 came from Libby, would you agree or not 6 agree with that?</b> 7 MS. HARDING: Just object to 8 form. 9 You can answer. 10 THE WITNESS: I don't have a 11 basis for agreeing because I don't 12 have -- 13 MR. SCHIAVONI: Objection, 14 calls for speculation, no 15 foundation. 16 MR. LEWIS: I think he was 17 saying that, Counsel. But don't 18 interrupt the witness again. You 19 can make your objections, but 20 don't interrupt the witness. I 21 don't interrupt the witness. 22 Let's have some decorum here. 23 Would you like to finish 24 your answer, sir?</p>

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MR. SCHIAVONI: I think he just acknowledged that the question called for speculation.

MR. LEWIS: I think he did, but allow him to answer. That was a foundational question.

THE WITNESS: I said I don't know enough about the issue of contamination -- amphibole contamination in chrysotile to answer that question.

BY MR. LEWIS:

**Q. Fair enough.**

**Do you have enough understanding of the asbestos that was generated from Grace's and Zonolite's operations in Libby was amphibole?**

MS. HARDING: Object to form, generated.

But go ahead.

THE WITNESS: Yes.

BY MR. LEWIS:

**Q. Was it all amphibole as far as you know?**

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MS. HARDING: Object to form.

MR. SCHIAVONI: No foundation, calls for speculation. We have a lawyer testifying here, not a fact witness from Libby or a scientist or anything else.

MR. LEWIS: Go ahead and answer.

THE WITNESS: Well, I was going to start by saying what counsel down the table just said.

But my understanding is amphibole, but I am not a mineralogist and I don't have that kind of expertise.

BY MR. LEWIS:

**Q. Yes, but one of the things that you said was important and a factor in evaluating a claim was the nature of the exposure, correct?**

MS. HARDING: Object to form.

Go ahead.

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THE WITNESS: But that's not what I meant by nature of the exposure. By nature of the exposure I meant the extent, the duration of the exposure and the extent to which the activity that was involved in terms of was the individual applying our product, was he working in a work space where someone else was applying it, did they mix our product. That's what I am talking about, the kind of factors that an industrial hygienist would use in assessing the nature of the exposure and the risk to the worker, who was the plaintiff.

BY MR. LEWIS:

**Q. Another factor you talked about was the quality of the evidence. What did you mean by that?**

A. What I meant is that if there were -- in a typical asbestos personal injury case, you might have

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coworkers who said a Monokote product and/or Zonolite product was present at this work site. And if the individual again, if the plaintiff himself recalled it and accurately described it in deposition testimony, that, in my opinion, would be better evidence and would be more persuasive to a jury than if a coworker who had no personal relationship with or didn't work alongside the plaintiff gave the same kind of testimony and it was an indirect connection between that.

And also there was documentary evidence. If we had evidence in our files that our product was used at a particular building at a particular time period, then I would consider that higher quality evidence than if we had no documents, which was often the case, no documents actually which showed shipments or sale of our product for installation in a particular building and an individual coworker or person at the



<div>CI</div> <div>Page 38</div>	<div>PP's Obj: R</div> <div>Page 40</div>
<p>1 site, sometimes somebody who wasn't even 2 involved in the application of the 3 product, testified about it.</p> <p>4 <b>Q. Have you ever been to Libby?</b> 5 A. Yes, I have. 6 <b>Q. How many times did you go</b> 7 <b>there?</b> 8 A. I have been there twice. 9 <b>Q. Did you go up to the mine?</b> 10 A. No, I haven't been to the 11 mine. It was closed. 12 <b>Q. Have you ever reviewed</b> 13 <b>documents concerning the kinds of</b> 14 <b>exposures at Libby?</b> 15 A. Yes, I have. 16 <b>Q. Libby claims did not involve</b> 17 <b>products claims; is that correct?</b> 18 MS. HARDING: Object to 19 form. 20 MR. SCHIAVONI: Objection, 21 calls for a legal conclusion, 22 overly broad. 23 MS. HARDING: And it's 24 overly broad.</p>	<p>1 to form and let the witness 2 answer. 3 MR. LEWIS: The witness 4 knows exactly what I am asking 5 about here. 6 MS. HARDING: I don't know 7 that the witness knows what you 8 are talking about. 9 MR. SCHIAVONI: Are you 10 contending that all the policies 11 have same definitions for products 12 in asking this question? Because 13 when you say the witness 14 understands, I mean, you seem to 15 be coaching the witness. Is that 16 your contention, that every policy 17 has the same definition for 18 products? 19 MR. LEWIS: I am not even 20 referring to policies here, sir. 21 I am referring to common law, tort 22 law. Okay. Those kinds -- the 23 distinction is between products 24 claims --</p>
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<p>1 MR. LIESEMER: I join in the 2 objection. 3 MR. SCHIAVONI: Lacks 4 foundation, overly ambiguous. 5 MR. LEWIS: Do you want the 6 question read back or do you 7 remember? 8 THE WITNESS: You should 9 probably read it back. 10 MR. LEWIS: I will just 11 restate it. 12 BY MR. LEWIS: 13 <b>Q. Did Libby claims involve</b> 14 <b>products claims?</b> 15 MS. HARDING: I am just 16 going to object to form in terms 17 of Libby claims. There is a wide 18 variety of Libby claims and a wide 19 variety of people. I don't 20 know -- 21 MR. LEWIS: Do you want me 22 to define Libby claims? That's 23 fine. 24 MS. HARDING: I will object</p>	<p>1 MR. SCHIAVONI: And what? 2 MR. LEWIS: -- injuries that 3 result from exposures to products 4 as opposed to injury in Libby that 5 related to exposure to the mining 6 and manufacturing of products or 7 sub-products. So I am not talking 8 about insurance policies right 9 here right now. I will later. 10 MR. JACOB COHN: If there is 11 a question, I object to the form. 12 MS. HARDING: I just object 13 to the form, and I think you can 14 answer. Did we get the question 15 back yet? 16 MR. LEWIS: I might take 17 eight hours here today if we keep 18 doing this. 19 MS. HARDING: Well, I don't 20 want to take eight hours, but I do 21 want to make sure the witness 22 understands the question. 23 MS. DeCRISTOFARO: And I 24 join.</p>



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1 A. The McDonald study, Amanda  
2 study, 1986.

3 **Q. Do you believe that the**  
4 **exposures at the dry mill were**  
5 **substantially similar to the exposures to**  
6 **Monokote 3 on construction sites?**

7 MS. HARDING: Object to form  
8 and foundation. This witness is  
9 not an expert, and I think it's an  
10 improper question to ask this  
11 witness.

12 But you can answer.

13 MR. LIESEMER: Object to the  
14 form of the question.

15 MR. SCHIAVONI: On a more  
16 fundamental basis, this witness is  
17 a 30(b)(6) witness. He is not an  
18 expert; he is not a fact witness.  
19 And this is not a topic that is  
20 designated.

21 MR. LEWIS: Yes, it is.

22 MR. SCHIAVONI: Really?  
23 Which one?

24 MR. LEWIS: Just look a

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1 MS. HARDING: Grace has  
2 already made its objections, and  
3 the witness can answer to the  
4 extent that --

5 THE WITNESS: Again, I am  
6 not an industrial hygienist, and I  
7 really -- having my opinion on  
8 whether they are quote/unquote  
9 substantially similar, I don't  
10 think I can do that.

11 They both involve asbestos  
12 exposures. I have described in my  
13 earlier testimony the conditions  
14 were different, that one involved  
15 the spray application of a  
16 finished product at the  
17 construction site, the Libby  
18 exposures involved working at a  
19 mine and mill operation. And the  
20 data that does exist is available,  
21 and I would rather rely on the  
22 data that's available. And I  
23 don't have that in front of me.

24 BY MR. LEWIS:

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1 them, Counsel. I am not going to  
2 answer your questions. I don't  
3 have to answer to you. You make  
4 your objections on the record, and  
5 we will proceed. Or otherwise we  
6 will be here forever.

7 MR. SCHIAVONI: If you can't  
8 identify it --

9 MS. HARDING: Let's just  
10 answer. I don't think he can  
11 answer, but go ahead.

12 MR. LEWIS: Do you want to  
13 the question read back? Let's  
14 read the question back so he can  
15 get a complete record.

16 (The reporter read from the  
17 record as requested.)

18 MR. SCHIAVONI: I object to  
19 form, and I object to Grace  
20 offering this testimony. It's not  
21 designated as corporate testimony.  
22 If that's what Grace is going to  
23 do, then you have my objection on  
24 the record.

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1 **Q. Do you recall when we**  
2 **started this deposition that I asked you**  
3 **to testify in the role of senior**  
4 **litigation counsel, settling asbestos**  
5 **claims?**

6 A. Yes.

7 **Q. We talked about that.**

8 **Do you agree that to perform**  
9 **that role well for your employer, you had**  
10 **to know something about asbestos**  
11 **exposure?**

12 A. Absolutely.

13 MS. HARDING: Object to  
14 form.

15 Go ahead.

16 BY MR. LEWIS:

17 **Q. And you differentiated --**  
18 **let me withdraw that question.**

19 **In every case that you**  
20 **looked at as an individual case, would**  
21 **the nature and extent of the exposure be**  
22 **fundamental to your evaluation of the**  
23 **case?**

24 MS. HARDING: Objection to

PP's  
Obj:  
R

form.

**THE WITNESS: Yes.**

BY MR. LEWIS:

**Q. The Libby cases were largely settled on a case-by-case basis, correct?**

MS. HARDING: Object to Libby cases. It's overly broad. But go ahead.

**THE WITNESS: Yes.**

BY MR. LEWIS:

**Q. Again, I am talking about Libby cases, as you earlier defined them, correct?**

A. Yes.

MS. HARDING: Who defined them?

MR. LEWIS: He agreed that we were talking about Libby cases, we were talking about cases that arose in Lincoln County, and he's testified that they were not -- that they were manufactured -- they were exposure cases different from Monokote exposures in the

five to ten cases.

BY MR. LEWIS:

**Q. Was that with the Heberling firm?**

A. Yes.

**Q. There were other settlements where you settled cases, 10,000 claims at a time, correct?**

A. Yes. Not Libby cases. Cases in other parts of the country involving exposures to finished products.

**Q. Right.**

**In those cases where you settled them 10,000 at a time or several thousand at a time, did you evaluate the quality of evidence for each individual claim in those cases?**

MS. HARDING: Object to form.

**THE WITNESS: Generally, the agreement set forth specific requirements for a case, qualifying materials, and we reviewed, individually reviewed**

sense -- and that's what I am asking about.

MS. HARDING: Okay. I object to the form. I think the terminology of "Libby cases" is overly broad.

But go ahead.

MR. SCHIAVONI: Can you just add to that those are a pre-petition cases, right?

MR. LEWIS: Please answer the question.

MR. SCHIAVONI: Objection to form, overly broad.

MS. DeCRISTOFARO: I join.

**THE WITNESS: Prior to bankruptcy, the cases in Libby involving Libby employees and family members that were settled generally were settled individually, although in the period of time just prior to the bankruptcy, there were cases that were settled in small groups of**

the qualifying materials that were submitted for each case before the case was settled.

I have testified about this and how those settlement agreements or inventory settlements worked in both of my prior depositions in this case.

BY MR. LEWIS:

**Q. Did you evaluate the exposure for each individual claim?**

A. Exposure --

MS. HARDING: Object to form, and I am just going to not -- I am not going to instruct the witness not to answer, but he has had prior deposition testimony on how these cases were settled. And counsel has indicated that you have reviewed those transcripts, so I just would request that we try not to repeat the same questions that were asked previously since the witness has



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1 already testified so we can try to  
2 get through this today. I am not  
3 going to -- with that, I am just  
4 making a request.

5 MR. LEWIS: Could you read  
6 back the question, please?

7 (The reporter read from the  
8 record as requested.)

9 THE WITNESS: Well, the  
10 qualifying materials that were  
11 required under the settlement  
12 agreements generally included  
13 evidence of exposure, and that  
14 would have been evaluated before  
15 the settlement was made.

16 BY MR. LEWIS:

17 **Q. As I recall your testimony,**  
18 **you were highly critical of the nature of**  
19 **evidence of exposure in most products**  
20 **cases; is that true?**

21 MS. HARDING: Object to  
22 form.

23 THE WITNESS: I was critical  
24 as to the credibility of the

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1 exposure evidence in many cases  
2 historically that were being filed  
3 in the period from -- well,  
4 throughout the period of the  
5 asbestos litigation, but  
6 specifically in the late '90s and  
7 early 2000.

8 BY MR. LEWIS:

9 **Q. Did you feel that**  
10 **plaintiffs' counsel were inventing**  
11 **evidence for their clients?**

12 MS. HARDING: Object to  
13 form.

14 MR. LIESEMER: Object to  
15 form.

16 THE WITNESS: Inventing  
17 evidence implies something that --  
18 I questioned the validity of the  
19 process through which the evidence  
20 was created. Whether it's  
21 invented, I don't know. But there  
22 are people's memories, and the way  
23 memory works, in my experience as  
24 a human being and also from people

1 who are experts in the area, a lot  
2 this evidence seemed inconsistent  
3 with it.

4 BY MR. LEWIS:

5 **Q. It was inconsistent with**  
6 **your own documents relating to where your**  
7 **asbestos was located or Grace's asbestos**  
8 **was located, correct?**

9 MS. HARDING: Object to  
10 form.

11 THE WITNESS: I don't know  
12 if it was inconsistent because we  
13 unfortunately didn't have a  
14 complete set of documents which  
15 would have told us where our  
16 products were located.

17 It was often inconsistent  
18 with what we knew about our  
19 products and how they were used  
20 and, you know, the product  
21 formulas and the type of material  
22 and the conditions that were being  
23 used, they were being applied  
24 under.

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1 BY MR. LEWIS:

2 **Q. Okay. In the Finch**  
3 **deposition that I read, I could not**  
4 **understand how you went through the**  
5 **information submitted for each claimant**  
6 **in this inventory or mass settlements, I**  
7 **would call them.**

8 **Did you do that**  
9 **post-settlement or pre-settlement?**

10 A. Post-settlement --

11 MS. HARDING: Object to  
12 form.

13 THE WITNESS: -- generally.

14 BY MR. LEWIS:

15 **Q. So if you settled 10,000**  
16 **cases for \$50 million, as you did in one**  
17 **case, does that mean that you paid the**  
18 **\$50 million regardless of whether there**  
19 **was proof, actual proof, in each**  
20 **individual case?**

21 MR. JACOB COHN: Object to  
22 form.

23 MS. HARDING: Object to  
24 form.

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THE WITNESS: We paid them 50 million -- it varied from settlement to settlement, quite frankly. In certain situations, we paid the money, but the authority for the attorneys representing the claimants to release the money and pay the money was subject to receiving communications from us that the qualifying materials met the requirements of the agreement.

BY MR. LEWIS:

**Q. In any one of those settlements, did Grace ever reject the proof offer to support the individual claims post settlement?**

A. Yes.

**Q. How many times did that happen?**

MS. HARDING: Object to form.

THE WITNESS: It happened more times than I could -- it

happened on a fairly regular basis, although it wasn't a substantial percentage of the cases.

BY MR. LEWIS:

**Q. So if you settle a case for 50 -- 10,000 claims for \$50 million, and 100 of those claims, for example -- I am asking you to assume a hypothetical here -- didn't show substantial proof of exposure or disease, the proof was defective in some manner, would the amount allocated for those 100 claimants be deducted from the settlement?**

A. Yes.

**Q. In every case?**

A. Not in every case, but, I mean, there were other -- it's difficult to say. I mean, in the administration of cases like that, you could assume a certain percentage of cases weren't going to meet the requirements in valuing the cases. There are all kinds of ways you could do it, but there was definitely a

process in place.

And, again, I am -- and I think as I have testified in the past, there was a process was in place, and I was confident that in the process that we had in place was reviewing the qualifying materials and we were paying places only where they had submitted qualifying materials consistent with the agreement.

I think my opinion as to the relative credibility of some of the qualifying materials, both medical and exposure, I have testified before and that is --

**Q. You have so testified. I am not going to get into that.**

A. Okay.

**Q. Do you recall the case, the specific case where you settled 10,000 claims for \$50 million, the firm you settled with?**

A. I believe it was Baron & Budd.

**Q. Were those 10,000 claims**

**just asbestosis claims or were there cancer and mesos in those claims?**

A. There were cancers and mesos.

**Q. Did the settlement provide that the mesos would get a different amount than the asbestosis claims?**

A. As I recall, yes.

**Q. Who made the decision as to who got what, how much each claimant was individually paid? Did Grace have any input in that?**

MS. HARDING: Just object to the extent it calls for attorney-client work product information. And to the extent -- I instruct the witness not to answer to the extent that it calls for that. To the extent that it doesn't, you can answer.

MR. LEWIS: I think the that's a fair objection because the question is not very precise. I will rephrase the question.



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1 **disease of each individual claimant**  
 2 **involved in an inventory settlement**  
 3 **before settling the case?**

4 MS. HARDING: Object to  
 5 form.

6 Go ahead.

7 THE WITNESS: Well, there is  
 8 a couple things. One is that, as  
 9 I said, there were medical  
 10 documentation requirements in the  
 11 inventory settlements, and we  
 12 reviewed the medical evidence that  
 13 was submitted as part of the  
 14 qualifying materials to make sure  
 15 that it met the requirements of  
 16 the particular inventory  
 17 settlement.

18 The other thing you need to  
 19 keep in mind is that in the  
 20 evolution of the litigation, many  
 21 of the inventory settlements, if  
 22 not most, involved or were agreed  
 23 to after a substantial amount of  
 24 time in litigation with the

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1 particular law firm, so we were  
 2 familiar with their clientele, the  
 3 disease that was involved, the  
 4 quality of the medical evidence in  
 5 terms of the specific doctors that  
 6 were submitting it and so on.

7 MR. LEWIS: To the extent  
 8 that that response is  
 9 nonresponsive so my question, I  
 10 move to strike it.

11 BY MR. LEWIS:

12 **Q. I am asking you about what**  
 13 **knowledge you had concerning the**  
 14 **seriousness of the disease of each**  
 15 **individual claimant before you entered**  
 16 **into these inventory settlements. And I**  
 17 **am not arguing with you. Did you**  
 18 **understand that was my inquiry?**

19 MS. HARDING: Object to  
 20 form. I think it's confusing.

21 Are you talking about their  
 22 complaints? I don't understand  
 23 the question, and I object.

24 BY MR. LEWIS:

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1 **Q. You listed the four factors**  
 2 **that you used to decide whether a**  
 3 **claim -- what settlement value was**  
 4 **assigned to a claim.**

5 A. Right.

6 **Q. Did you have information as**  
 7 **to all of these four factors for each**  
 8 **claimant in inventory settlements before**  
 9 **you entered into the settlement**  
 10 **agreement, the inventory settlement**  
 11 **agreement?**

12 MS. HARDING: Object to  
 13 form.

14 If you can answer, go ahead.

15 THE WITNESS: Again, not  
 16 necessarily for all of the  
 17 claimants, but we had procedures  
 18 in the settlement agreement itself  
 19 that required that kind of  
 20 information to be submitted to us.  
 21 And, as I said before -- and I  
 22 feel was responsive -- we  
 23 generally had a course of dealing  
 24 and history with the particular

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1 firm so we knew something about  
 2 the clients and we knew something  
 3 about the quality of evidence we  
 4 expected to see as far as exposure  
 5 and the medical condition of the  
 6 plaintiff.

7 BY MR. LEWIS:

8 **Q. So does that mean if Grace**  
 9 **had a good relationship with a particular**  
 10 **firm, that firm's claimants got to settle**  
 11 **their cases and other unfamiliar**  
 12 **plaintiffs' lawyers couldn't settle their**  
 13 **cases?**

14 MR. LIESEMER: Object to the  
 15 form.

16 MS. HARDING: Object to the  
 17 form.

18 THE WITNESS: No.

19 BY MR. LEWIS:

20 **Q. Well, for example, you had a**  
 21 **good relationship with Worthington,**  
 22 **right?**

23 MS. HARDING: Object to  
 24 form.

PP's  
Ctr.PP's  
Ctr.